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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/390,289	09/03/1999	JEFFREY S. DUGAN	709.36924X00	6666

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/390,289

Applicant(s)

DUGAN ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 07 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 81.

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 9, 11-21, 24-30, 62, 64-69, 72-80 and 82.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): The 35 USC 103 rejection based on Harrington, Jr. et al. (3,229,008) is withdrawn since Harrington, Jr. is drawn to producing a nonwoven fabric wherein the first fiber material is made from a polypropylene fiber and not one of the fiber materials the applicant is now claiming.

Continuation of 5. does NOT place the application in condition for allowance because: An error was noted in the final rejection wherein the Marshall rejection heading failed to state "in view of Understanding Textiles." However, the Understanding Textiles reference is clearly relied upon and discussed in the rejection. Therefore, to clarify the standing rejection on the record is: Claims 9, 11 - 21, 24 - 30, 62, 64 - 69, 72 - 80, and 82 are rejected over Marshall in view of Understanding Textiles.

The applicant's arguments are not sufficient to overcome the rejection based on Marshall in view of Understanding Textiles because the applicant has failed to provide sufficient evidence to demonstrate the claimed article would have a different structure than the prior art due to the fact it is produced by a different process. The Applicant argues that the fabric made by the claimed process would have improved softness and strength properties. First, it is again noted that the applicant does not claim these properties. Second, as set forth previously, the method of making the product does not produce a structurally different product from the prior art and therefore is not given patentable weight in the product claim at this time. The applicant argues that the improved strength would be due to a more uniform fiber distribution and more bonding sites. The Applicant has provided no evidence that shows the product taught by Marshall in view of Understanding Textiles would not have fibers which are just as uniformly blended and have just as many bond sites. Further, the final product only has one type of fiber so the blending uniformity would only determine how well the binder is spread throughout the nonwoven fabric. No evidence has shown the binder in the prior art would not be spread throughout the fabric after is melted just as well as the binder in the claimed invention. Also, the applicant argues that the size of the fibers would improve the softness of the product. However, the applicant only claims the size of the multicomponent fiber and these limitations have been addressed in the rejection. Hence, the prior art would have the same softness properties since it would have the same size fibers which are bonded together by a second material at the cross-over points. Further, the applicant has provided no evidence to show that the product produced by the prior art wouldn't have the same strength and softness properties. The arguments of the applicant cannot take the place of evidence. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Therefore, the product produced by the prior art is considered to be structurally the same as the final product produced by the claimed process and the rejection is maintained.

CHERYL A. JUSKA  
PRIMARY EXAMINER